IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.147/2005

Decided on.11.7.2007

Sanjeev Kumar . …Petitioner

Versus

The Presiding Officer & others. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No.*

For the petitioner : Mohit Thakur, Advocate.

For the respondents Mr. M.S. Chandel, Advocate General with M.A. Khan and Ms. Meenakashi Sharma, Deputy Advocate Generals for respondents No.2 and 3.

Rajiv Sharma, J. (oral)

A challenge has been laid by way of this petition to the award passed by the Labour Court-cum-Industrial Tribunal, Shimla dated 21st July, 2004 in reference No. 63/2002.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the Labour Court-cum-Industrial Tribunal, Shimla:

> **"Whether the plea of the District Horticulture Officer, Bilaspur that Sh. Sanjeev Kumar S/o Sh. Bhag Singh daily wage workman had left the job of his own accord w.e.f. 6.5.1995 is proper and justified? If not, what seniority, service benefits and relief the concerned workman is entitled to?"**

In sequel to the reference made by the Labour Court, the statement of claim was filed by the petitioner (herein-after referred to as the workman

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No.

for convenience sake). The workman had primarily contended before the Labour Court that he was engaged in the month of June, 1994 and had continuously discharged his duties upto May, 1995, but he was retrenched without issuing any notice contemplated under the provisions of Industrial Disputes Act, 1947. The employer had filed reply to the statement of claim. The Labour court vide award dated 21st July, 2004 had answered the reference in affirmative and had declared the retrenchment of the workman with effect from 6.5.1995 illegal and unjustified. The Labour Court had directed the reinstatement of the workman with effect from 12.2.2002 with seniority and 25% back wages.

Mr. Mohit Thakur, Advocate had contended that once the Labour Court had come to the conclusion that the retrenchment of the workman was in violation of the mandatory provisions of the Industrial Disputes Act, 1947, the workman was entitled to the back wages with effect from the date of his retrenchment i.e. 6.5.1995.

The learned Deputy Advocate General had supported the award dated 22.11.2005.

I have heard the parties and perused the record.

The workman was engaged with effect from June, 1994 to May, 1995. He was retrenched on 6th May, 1995. He had raised the demand for the first time in August, 1999 and the reference was made by the State Government on 12th February, 2002. There is a delay of about seven years in raising the dispute. The Labour Court had taken into consideration the delay while restricting the back wages to 25% with effect from the date of reinstatement i.e. 12.2.2002.

The Apex Court in ***State of Punjab v. Anil Kumar***, JT 2007 (7) SC 559 has held that if there is any inordinate delay in raising the dispute, the Labour

Court should not ordinarily grant the back wages. Their Lordships have held as under:

> **"Learned counsel for the respondent on the other hand submitted that there was a clear admission before the Labour Court that the respondent had worked for more than 240 days.**
>
> **In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be re-instated.**
>
> **At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.**
>
> **In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified."**

Accordingly there is no merit in the writ petition and the same is dismissed with no order as to costs.

(Rajiv Sharma), Judge

July 11, 2007
Awasthi